

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 NADINE HAYS,) CASE NO. CV 12-10219-DMG (PJW)
11)
12 Plaintiff,) FINAL REPORT AND RECOMMENDATION
13 v.) RE: PLAINTIFF'S MOTION FOR
14) SUMMARY ADJUDICATION (DOC NO. 94)
15)
16 LOS ANGELES POLICE DEPARTMENT,)
17 et al.,)
18)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

29 This Final Report and Recommendation is submitted to the Hon.
30 Dolly M. Gee, United States District Judge, pursuant to 28 U.S.C.
31 § 636 and General Order 05-07 of the United States District Court for
32 the Central District of California. For the reasons discussed below,
33 it is recommended that Plaintiff's Motion for Summary Adjudication be
34 denied and that Defendants be granted summary judgment on the issue of
35 whether there was probable cause to arrest Plaintiff on April 25,
36 2012.¹

37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
21

I.

SUMMARY OF FACTS

On March 8, 2012, Plaintiff attended the Los Angeles Art Walk, a monthly outdoor food and art festival. (Hays Decl. at ¶¶ 4, 9; Frank Decl. at ¶ 2.) Plaintiff, who was a member of the "Occupy Movement," intended to perform what she calls an "educational road show" with her friend Donald Kronos, in which they inform attendees about important issues of the day. (Hays Decl. at ¶¶ 4, 9.) To facilitate her efforts, she brought a wheeled cart loaded with an amplifier, a computer, a plasma TV screen, candy to hand out to passers-by, and informational handouts. (Hays Decl. at ¶ 5.)

After Plaintiff set up her equipment, she was approached by Defendant Los Angeles Police Captain Horace Frank. (Compl. at ¶ 53; Hays Decl. at ¶¶ 9-10; Frank Decl. at ¶ 3.) Frank issued Plaintiff a citation for violating Los Angeles Municipal Code § 56.11, which makes it a crime to leave "merchandise, baggage or any article of personal property upon any parkway or sidewalk." (Hays Decl. at ¶¶ 10-12; Frank Decl. at ¶¶ 4-5; Los Angeles Municipal Code § 56.11.)

Six weeks later, on April 25, 2012, Plaintiff and Kronos returned to downtown Los Angeles with their equipment to perform their educational road show. Plaintiff began speaking to passersby through the amplifier while Kronos filmed the scene. (Hays Decl. at ¶¶ 19-21; Plaintiff's Motion, Exhs. 5-8, Digital Recordings from April 25, 2012.) Officers Walker and Echavarria told her that she had to move. (Hays Decl. at ¶¶ 19-20.) Plaintiff failed to move and began taunting the officers. (Hays Decl. at ¶ 20; Plaintiff's Motion, Exhs. 5-8.) She then began wheeling her cart down the street, continuing her monologue as she traversed the block, and, eventually, wheeled it back

1 to where she started. (Hays Decl. at ¶ 21; Plaintiff's Motion, Exhs.
 2 5-8.) Once there, she parked her cart on the sidewalk, all the time
 3 speaking through her sound system. (Plaintiff's Motion, Exhs. 5-8.)
 4 Officers then arrested her for using amplified sound. (Hays Decl. at
 5 ¶¶ 22-24; Plaintiff's Motion, Exhs. 5-8.)

6 II.

7 ANALYSIS

8 Plaintiff brought this action against the Los Angeles Police
 9 Department, Captain Frank, Officer Echavarria, and others under 42
 10 U.S.C. § 1983, alleging that they violated her constitutional rights
 11 when they falsely detained, arrested, and imprisoned her on March 8,
 12 2012, and April 25, 2012. (Complaint at 23.) She now moves for
 13 summary adjudication, asking the Court to rule on "whether Plaintiff's
 14 two arrests were legally done or if they were done without probable
 15 cause."² (Motion at 2.)

16 A. Standard of Review

17 Under Federal Rule of Civil Procedure 56, summary judgment, or,
 18 in this case, partial summary judgment, is warranted if there is no
 19 genuine dispute as to any material fact and the moving party is

20
 21 ² In her Complaint, Plaintiff alleges that Defendants violated
 22 her Fifth and Fourteenth Amendment due process rights. (Complaint at
 23 23.) In her Motion, however, she claims that they violated her Fourth
 24 Amendment rights against unreasonable searches and seizures. (Motion
 25 at 15.) The detention and false arrest claims may not be raised under
 26 the due process clause of either the Fifth or Fourteenth Amendments.
 27 See *Albright v. Oliver*, 510 U.S. 266 (1994) (rejecting claim arrest
 28 and prosecution without probable cause violated substantive due
 process rights and holding claim must be evaluated under the Fourth
 Amendment); *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008)
 (holding driver and passenger struck by police cruiser chasing suspect
 may not bring action under Fifth Amendment due process clause because
 it only applies to federal actors). For that reason, the Court will
 analyze these claims under the Fourth Amendment.

entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A "genuine issue" exists if there is a sufficient evidentiary basis upon which a reasonable jury could find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A factual dispute is "material" if it might affect the outcome of the suit under governing law. *Id.* at 248. In ruling on a motion for summary judgment, the Court views the inferences it draws from the underlying facts in a light most favorable to the party opposing the motion. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party seeking summary judgment bears the initial burden of informing the district court of the basis for the motion and identifying those portions of the affidavits, pleadings, depositions, answers to interrogatories, and admissions on file, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Where the moving party fails to do so, the opposing party need not come forward with evidence to counter the motion. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970).

B. The March 8, 2012 Incident

On March 8, 2012, Plaintiff was cited and arrested for leaving her cart on the sidewalk. Plaintiff claims that Defendant Frank did not have probable cause to arrest her. For the reasons explained below, the Court concludes that Plaintiff has failed to establish that Frank did not have probable cause.³

³ It is not clear to the Court whether Plaintiff was arrested on March 8, 2012, or merely issued a citation. In her declaration, she claims that Defendant Frank only cited her that day but explains that she "later found out that [the citation] was actually classified as an arrest." (Hays Decl. at ¶ 12.) In Captain Frank's report, which

1 Generally speaking, the Fourth Amendment prohibits a police
2 officer from arresting someone unless there is probable cause to
3 believe that the suspect has committed a crime. Const. Amend. IV.
4 Probable cause exists where, under the totality of the circumstances
5 known to the arresting officer, a prudent person would believe that
6 the suspect committed a crime as that crime is defined under the law.
7 *Lacey v. Maricopa County*, 649 F.3d 1118, 1131 (9th Cir. 2011), citing
8 *Dubner v. City and County of San Francisco*, 266 F.3d 959, 966 (9th
9 Cir. 2001); *Peschel v. City of Missoula*, 686 F. Supp. 2d 1107, 1118
10 (D. Mont. 2009). Said another way, if there is a "fair probability"
11 that a suspect has committed a crime, a police officer has probable
12 cause to arrest him. *Tatum v. City and County of San Francisco*, 441
13 F.3d 1090, 1094 (9th Cir. 2006)

14 Plaintiff was cited and arrested for violating Los Angeles
15 Municipal Code § 56.11. This section makes it illegal to "leave or
16 permit to remain any merchandise, baggage or any article of personal
17 property upon any parkway or sidewalk." Plaintiff allowed her cart to
18 remain on the sidewalk on March 8, 2012, even after being told by
19 police to move it. As such, police had probable cause to arrest her.

20 Plaintiff disagrees. She seems to think that this ordinance only
21 applies to vendors and points out that she was not selling anything
22 that night and had not placed any merchandise on the sidewalk.

23 (Complaint at 23; Hays Decl. at ¶ 10.) Plaintiff's interpretation of
24

25 Plaintiff submits as an exhibit to her Motion, he states that he
26 arrested her then issued her a citation and released her. But in his
27 declaration in opposition to the Motion, he states that he issued her
28 a citation. (Motion at Exh. 2; Frank Decl. at ¶¶ 4-5.) The Court
will assume for purposes of this Motion that Plaintiff was arrested
that night.

1 the ordinance is misplaced. On its face it is not limited to vendors
2 or to merchandise.

3 Further, to the extent that Plaintiff believes that the ordinance
4 did not apply to her because her cart was on wheels and, therefore,
5 was moveable, that argument, too, is rejected. The statute is not
6 limited to carts without wheels. Clearly, it applies to carts (and
7 other things) with wheels as well as those without. The obvious
8 purpose of the ordinance is to prevent people from obstructing the
9 sidewalks. The fact that the obstruction can be more easily moved
10 when it is on wheels than when it is not does not shield the owner
11 from the reach of the law.

12 Plaintiff contends that police were attempting to silence her for
13 her political activities and that they were selectively enforcing this
14 ordinance against her. Assuming that this is true, it does not help
15 her cause. The officers' motivations are irrelevant in a probable
16 cause analysis. *Lacey*, 649 F.3d at 1132 (noting arresting officers'
17 intent or motivation is irrelevant to probable cause analysis); *Tatum*,
18 441 F.3d at 1094 ("If the facts known to an arresting officer are
19 sufficient to create probable cause, the arrest is lawful, regardless
20 of the officer's subjective reasons for it.").

21 If, as Defendants assert, Plaintiff parked her cart on the
22 sidewalk (and refused to move it when told to by police), she violated
23 section 56.11 and police had probable cause to arrest her. But, for
24 purposes of this Motion, the Court only concludes that she has not
25 carried her burden of establishing that they did not have probable
26
27
28

1 cause to arrest her. For that reason, her Motion for summary
2 adjudication on this issue is denied.⁴

3 C. The April 25, 2012 Arrest

4 Plaintiff was arrested on April 25, 2012, for using amplified
5 sound. She argues that Defendant officers did not have probable cause
6 to arrest her because the ordinance barring amplified sound did not
7 apply to what she was doing. (Complaint at 23; Motion at 14.)
8 Defendants disagree. They contend that the law forbids the use of
9 amplified sound and that they were justified in arresting her when she
10 refused to stop using it. (Opposition at 5.) For the following
11 reasons, the Court sides with Defendants, concluding that, not only is
12 Plaintiff not entitled to summary judgment, but, with respect to the
13 issue of probable cause for her arrest that day, Defendants are.

14 Los Angeles Municipal Code § 41.57, provides:

15 It is unlawful for any person to cause, allow or permit the
16 emission or transmission of any loud or raucous noise from
17 any sound making or sound amplifying device in his
18 possession or under his control. (sic) (1) upon any private
19 property, or (2) upon any public street alley, sidewalk or
20 thoroughfare, or (3) in or upon any public park or other
21 public place or property.

22 Plaintiff admits that she was "talking to the public with [her]
23 amplified sound" shortly before she was arrested. (Hays Decl. at

24
25 ⁴ The videos Plaintiff submitted with her Motion capture this
26 arrest but they are too dark to see what happened that night. (Motion
27 at Exh. 4.) Had they been brighter, it is likely that the Court would
28 have granted Defendants summary judgment as to this arrest. See,
e.g., *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 311-12 (9th Cir. 1982)
(explaining court can sua sponte grant summary judgment to the non-
moving party when warranted by the record).

¶¶ 19-24.) Furthermore, she attached as an exhibit a video recording of the incident, which clearly shows her standing on the sidewalk and speaking through a microphone that is connected to an amplifier, which is loudly amplifying her voice. (Motion at Exh. 6.) The video shows the police arriving and explaining to her that she has to leave, and that, if she fails to, she will be arrested. (Motion at Exh. 6.) Plaintiff can be seen ignoring the officers' commands and taunting them through the amplifier. (Motion at Exh. 6.) Plaintiff can then be seen walking down the street, pulling her cart with her amplifier on it, and speaking through the microphone. (Motion at Exh. 6.) Plaintiff appears to walk almost to the end of the block, a distance of likely more than 75 feet, still speaking into the sound system, and can still be heard from where she walked away from the officers. (Motion at Exh. 6.)

Thus, what is patently clear from Plaintiff's evidence is that she violated the amplified sound ordinance and police had probable cause to arrest her for violating that law. As such, the Court denies Plaintiff's Motion for Summary Adjudication on this issue and grants summary adjudication to Defendants. See *Watts v. U.S.*, 703 F.2d 346, 347 (9th Cir. 1983); *Cool Fuel, Inc.*, 685 F.2d at 311-12 (noting, if a party moves for summary judgment and it is clear from the pleadings that there is no genuine dispute with respect to a material fact and the case cannot be proved at trial, the court may *sua sponte* grant summary judgment to the non-moving party).

Plaintiff argues that she had already turned off the amplifier when the officers arrested her. (Hays Decl. at ¶ 25.) This is not clear from the video. But, even if it was, it is irrelevant. The officers were free to arrest her at any time after she used the system

1 to amplify her voice in violation of the law. There was no time limit
2 for them to do so. The fact that they may have waited to arrest her
3 does not render her arrest unlawful.

4 In her Objections to the Report and Recommendation, Plaintiff
5 contends that she was also seeking summary adjudication on the
6 constitutionality of the amplified sound ordinance. The Court rejects
7 this argument. Plaintiff made clear in statements to the Court before
8 filing the Motion that she sought resolution only on the issue of
9 probable cause. As she explained on more than one occasion, if the
10 Court found that there was probable cause, she was inclined to drop
11 her lawsuit because it was creating friction with her husband.
12 (Motion at 2.) In her Motion, she noted that this friction had
13 "spurred Plaintiff to ask for the Court to make a ruling as to whether
14 Plaintiff's arrests were made without probable cause." (Motion at 2.)
15 She explained that, "If the Court rules that the arrests were
16 justified, Plaintiff will have no justification to proceed with this
17 lawsuit." (Motion at 2.)

18 After receiving the Report and Recommendation containing the
19 Court's finding that there was probable cause for her arrest,
20 Plaintiff shifted gears, arguing in her Objections that she was also
21 seeking a ruling on the constitutionality of the amplified sound
22 ordinance. It is too late to make that argument now. Plaintiff never
23 argued in the Motion that the ordinance was unconstitutional or ask
24 the Court to rule on whether it was. For that reason, Defendants
25 never addressed it in their brief. Nor did the Court in the original
26 Report and Recommendation. Her request that the Court take up the
27 issue in the now without any briefing is denied. Plaintiff may bring
28

1 a separate motion challenging the constitutionality of the ordinance
2 if she sees fit.⁵

3 D. Plaintiff's Other Objections to the Report and Recommendation

4 Plaintiff complains that she did not get notice of the motion
5 hearing date and, therefore, did not have the chance to argue her
6 positions at the hearing. (Objections at 3.) This objection is
7 overruled. The Court sent her a minute order two months before the
8 hearing notifying her of the time and date of the hearing. (Doc. No.
9 113.) Assuming that she did not receive it, she should have checked
10 the docket or called the clerk to determine when her Motion was being
11 heard. This is particularly true since the hearing was held three
12 months after she filed the Motion.

13 Further, the Court does not find that she has suffered any
14 prejudice as a result of missing the hearing. Defendants' counsel
15 merely submitted on the tentative when Plaintiff failed to appear and
16 whatever Plaintiff could have or would have said at the hearing she
17 has been able to say in her filings since the hearing, including in
18 her Objections.

19 Plaintiff contends that the Court unfairly denied her request for
20 additional time to file a reply brief despite the fact that it granted
21
22

23 ⁵ Even assuming that the Court were to conclude that the
24 ordinance was unconstitutional, it would also have to conclude that
25 the officers were entitled to qualified immunity because it appears
26 from the face of the ordinance that it is constitutional and,
27 therefore, the officers are shielded from suit for enforcing it, even
28 if it is later determined to be unconstitutional. See *Acosta v. City of Costa Mesa*, 718 F.3d 800, 823-24 (9th Cir. 2013) (holding officers entitled to qualified immunity for arrest pursuant to ordinance that is later determined to be unconstitutional).

1 Defendants' request for additional time to file an opposition.

2 (Objections at 5.) There is no merit to this argument.

3 The Court denied Plaintiff's request for an extension because it
4 came after the Court had issued its tentative decision and after the
5 hearing on the Motion was over. Further, after the Report and
6 Recommendation was issued, Plaintiff filed Objections, which included
7 her arguments regarding the Motion and to which she improperly
8 attached her Reply brief anyway. The Court has drafted this Final
9 Report and Recommendation with those arguments in mind. Thus,
10 Plaintiff has not been prejudiced by the Court's failure to grant her
11 request to file her Reply brief after the Court released its tentative
12 decision and held a hearing on the Motion.

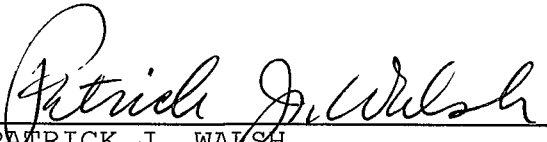
13 III.

14 RECOMMENDATION

15 For the foregoing reasons, IT IS RECOMMENDED that the Court
16 issue an Order: (1) accepting this Final Report and Recommendation;
17 (2) denying Plaintiff's Motion for Summary Adjudication on the March
18
19
20
21
22
23
24
25
26
27
28

1 8, 2012 arrest; and (3) granting summary adjudication to Defendants on
2 the issue of whether they had probable cause to arrest her on April
3 25, 2012.

4
5 DATED: December 22, 2014

6 
7 PATRICK J. WALSH
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28